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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, individually and as
Successor in Interest for RICHARD
DESANTIS, deceased, and as Guardian Ad
Litem for DANI DESANTIS, a minor and
TIMOTHY FARRELL, a minor,

Plaintiffs,
v.

CITY OF SANTA ROSA, JERRY SOARES,
RICH CELLI, TRAVIS MENKE, PATRICIA
MANN and DOES 1 through 25, inclusive,

Defendants.

Case No.: C 07 3386 JSW

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: October 19, 2007

Time: 1:30 p.m.

Place: Courtroom 2, 17th Fl.

JURISDICTION

1
2
3 1. This action arises under Title 42 of the United States Code § 1983. Jurisdiction is
4 conferred pursuant to Title 28 of the United States Code §§1331 and 1343. All parties have been
5 served. Jurisdiction and venue are not in dispute.

6 **FACTS**

7 2. On the night of April 8, 2007, Richard DeSantis told his wife, Patricia DeSantis,
8 that he heard noises in the attic. Sometime thereafter Richard DeSantis fired shots into the
9 ceiling. His wife called 911 for assistance. She reported that her husband had fired shots into the
10 ceiling, that he was bi-polar and that she needed help.

11
12 Soon thereafter six police officers arrived. Richard DeSantis and his wife, holding their
13 two year old daughter Dani, came out of the house onto the front porch in view of the police
14 officers. The officers ordered Richard DeSantis to approach them.

15 Richard DeSantis approached the officers. He was then ordered to lie on the ground.
16 Richard DeSantis eventually got on the ground but did not stay down. He rose and approached
17 the officers. At that point Sgt. Jerry Soares fired a non-lethal projectile breaking DeSantis' arm.
18 Sgt. Rich Celli and Officers Travis Menke and Patricia Mann fired their weapons, including a
19 rifle. Two of the shots struck Richard DeSantis' upper torso causing his death.
20

21 **LEGAL ISSUES**

22 The primary legal issues in dispute relate to whether the officers used excessive force
23 (*Graham v. Connor*, 490 U.S. 386 (1989)) and whether the officers are entitled to qualified
24 immunity (*Saucier v. Katz*, 121 S.Ct. 2151 (2001)). There is also an issue as to whether the City
25 has any independent liability under the holding of *Monell v New York City Dept. of Soc. Serv.*,
26 436 U.S. 658; 56 L.Ed.2d 611; 98 S.Ct. 2018 (1978).
27
28

MOTIONS

3. The defendants anticipate bringing a motion for summary judgment. In addition, it may be necessary for discovery motions to be brought because of the confidentiality or privacy issues related to police officers' personnel records and the decedent's medical/ psychiatric records.

AMENDMENT OF PLEADINGS

4. The plaintiffs will be amending their complaint to add a supplemental/ pendent state wrongful death claim. The plaintiffs will request that the defendants stipulate to this amendment. Otherwise, the plaintiffs will bring a motion.

EVIDENCE PRESERVATION

5. Both plaintiffs and defendants have taken steps to preserve evidence relevant to the issues reasonably evident in this action.

DISCLOSURES

6. The parties will be making initial disclosures under Rule 26 on or before October 12, 2007.

DISCOVERY

7. No discovery has been taken to date. Plaintiffs are informed that the Sonoma County District Attorney is still reviewing this case and this could potentially impact future discovery when the investigative report prepared by the Sheriff 's department and the District Attorney are made public. The plaintiffs intend to immediately take the depositions of the defendants – assuming they do not intend to assert a privilege under the Fifth Amendment. Defendant intends to take the deposition of plaintiff Patricia DeSantis and Timothy Farrell. Defendant further intent to seek records relating to the psychological history of Richard DeSantis.

1 The parties do not believe there is a need for limitations or modifications of the discovery rules at
2 this time.

3 The parties anticipate that there will be significant additional discovery once the
4 investigative report has been made public. The parties are in the process of trying to agree upon
5 an appropriate protective order subject to court approval.
6

7 **CLASS ACTIONS**

8 8. Not applicable.

9 **RELATED CASES**

10 9. The mother of the decedent, Adrienne DeSantis, has brought a case that was
11 recently related to this case (*DeSantis v. City of Santa Rosa*, Case No: C 07-04474). The parties
12 are not aware of any other related cases.
13

14 **RELIEF**

15 10. The plaintiffs are seeking lost earnings, funeral and burial expenses, general
16 damages for the loss of comfort and society of the decedent, and punitive damages. At some
17 point the plaintiffs anticipate they will be hiring a forensic economist to evaluate the lost earning/
18 financial support claim. This would be done using traditional methods and calculations relied
19 upon by forensic economists in evaluating this type of economic loss. Defendants contend that
20 plaintiffs are not entitled to recover any damages.
21

22 **SETTLEMENT AND ADR**

23 11. The parties have stipulated to engage in Early Neutral Evaluation. In order for the
24 process to be productive, the parties would request that scheduling of the Early Neutral
25 Evaluation be delayed until the parties have at a minimum conducted some initial discovery or
26 possibly until the investigative report has been made public.
27
28

1 CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

2 12. The parties will not consent to a magistrate judge for further proceedings except
3 for purposes of a settlement conference at some later date.

4 OTHER REFERENCES

5 13. This case is not suitable for reference to binding arbitration, a Special Master or
6 Judicial Panel.

8 NARROWING OF ISSUES

9 14. Defendants anticipate filing a motion for summary judgment after completing
10 some initial discovery on the issues of qualified immunity and the Monell claim against the City
11 which will either resolve the case or narrow the issues.

12 EXPEDITED SCHEDULE

13 15. This is not the type of case that can be handled on an expedited basis.

15 SCHEDULING

16 16. The parties request a trial date for September or October 2008 with a hearing date
17 of dispositive motions in May or June 2008. The parties also propose August 2008 for discovery
18 cut-off except for expert witnesses. For designation of expert witnesses in August 2008 with
19 expert witness discovery cutoff thirty (30) days after the disclosure date.

21 TRIAL

22 17. The case will be tried to a jury. The parties anticipate the trial to last 8 – 10 days.

23 DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

24 18. None.

25 MISCELLANEOUS

26 19. The parties believe that the pending investigation of the shooting by the Sheriff's
27 department and the District Attorney will impact discovery since it may disclose additional
28

1 witnesses or information that the parties will need to investigate. The parties are not aware of any
2 other matters at this time which may facilitate the just, speedy and inexpensive disposition of this
3 case.
4

5 **DATED:** October 11, 2007

SCOTT LAW FIRM

6
7 By: /s/
8 **JOHN HOUSTON SCOTT**
Attorney for Plaintiff

9 **DATED:** October 11, 2007

10
11
12 By: /s/
13 **CAROLINE L. FOWLER**
Attorney for Defendants
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